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## ALIENS - DEPORTATION - CRIMES INVOLVING MORAL TURPITUDE

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## RECENT DECISIONS

ALIENS — DEPORTATION — CRIMES INVOLVING MORAL TURPITUDE — The petitioner in this case was an alien who had been convicted of smuggling into and concealing within the United States illegally imported alcohol. He was sentenced to serve a year and a day in a federal penitentiary. Upon his release, he was arrested and ordered deported under the Immigration Act of 1917,<sup>1</sup> as an alien who after February 5, 1917 was sentenced to imprisonment for a term of more than a year because of conviction in this country of a crime involving moral turpitude, committed within five years after his entry to the United States. Petitioner seeks release on habeas corpus on the ground that the crime for which he was sentenced did not involve moral turpitude. *Held*, that the petition should be denied. Smuggling goods into the United States with intent to defraud the revenue is dishonest and fraudulent and involves moral turpitude. *Guarneri v. Kessler*, (C. C. A. 5th, 1938) 98 F. (2d) 580.

The courts have not been in agreement as to the meaning of the words "moral turpitude" used in this deportation statute.<sup>2</sup> Nearly all of them state very similar definitions, one of the most common being that it is "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow-men or to society in general, contrary to the accepted and customary rule of right and duty between man and man,"<sup>3</sup> but they arrive at different conclusions as to what crimes involve moral turpitude in spite of this. The cases are in agreement that acts which involve stealing, such as grand and petit larceny,<sup>4</sup> theft,<sup>5</sup> issuing a check without funds,<sup>6</sup> any act done with intent to defraud,<sup>7</sup> or receiving stolen goods,<sup>8</sup> are within the meaning of the term.

<sup>1</sup> 39 Stat. L. 889 (1917), § 19 (1), 8 U. S. C. (1934), § 155.

<sup>2</sup> The interpretation of the phrase "moral turpitude" in statutes relating to disbarment, revocation of physicians' licenses, defamation, habitual offenders, and competency of witness is beyond the scope of this note.

<sup>3</sup> This rule was formulated by NEWELL, SLANDER AND LIBEL, 3d ed., § 66 (1914); *Ng Sui Wing v. United States*, (C. C. A. 7th, 1931) 46 F. (2d) 755.

<sup>4</sup> *United States ex rel. Ulrich v. Kellogg*, (App. D. C. 1929) 30 F. (2d) 984; *Tillingast v. Edmead*, (C. C. A. 1st, 1929) 31 F. (2d) 81; *United States ex rel. Meyer v. Day*, (C. C. A. 2d, 1931) 54 F. (2d) 336; *United States ex rel. Parenti v. Martineau*, (D. C. Conn. 1930) 50 F. (2d) 902; *Ponzi v. Ward*, (D. C. Mass. 1934) 7 F. Supp. 736; *Blumen v. Haff*, (C. C. A. 9th, 1935) 78 F. (2d) 833, cert. den. 296 U. S. 644, 56 S. Ct. 248 (1935); *United States ex rel. Amato v. Commissioners of Immigration*, (D. C. N. Y. 1937) 18 F. Supp. 480.

<sup>5</sup> *United States ex rel. Rizzio v. Kenney*, (D. C. Conn. 1931) 50 F. (2d) 418.

<sup>6</sup> *United States ex rel. Portada v. Day*, (D. C. N. Y. 1926) 16 F. (2d) 328.

<sup>7</sup> Incumbering mortgaged property, *United States v. Milard & Tuttle*, (D. C. La. 1930) 46 F. (2d) 342; forgery, *United States ex rel. Robinson v. Day*, (C. C. A. 2d, 1931) 51 F. (2d) 1022; using the mails to defraud, *Ponzi v. Ward*, (D. C. Mass. 1934) 7 F. Supp. 736; conspiring to defraud, *Mercer v. Lence*, (C. C. A. 10th, 1938) 96 F. (2d) 122.

<sup>8</sup> *United States ex rel. Rydberg v. Reimer*, (D. C. N. Y. 1936) 17 F. Supp. 414.

The present case seems to fall within this class and thus is in accord with the decided cases. However, the courts split with regard to the assault cases. Where it was an aggravated assault with a deadly weapon, it has been held an act of moral turpitude;<sup>9</sup> on the other hand it has been held not to be,<sup>10</sup> depending on the circumstances of the assault. The same situation is found in regard to manslaughter, but the indication is that when there was no wilful injury, the act will not be considered one involving moral turpitude,<sup>11</sup> while manslaughter committed during a wilful assault will be.<sup>12</sup> The great divergence of decision came when the courts had to decide whether violation of the prohibition laws was an act of moral turpitude. Here the decisions are irreconcilable. Some courts held that since prohibition was the law of the land, its violation was an act of moral turpitude,<sup>13</sup> while others held that making liquor was not inherently wicked and though contrary to the prohibition law did not involve moral turpitude.<sup>14</sup> An interpretation that every crime necessarily involves moral turpitude is negated by the act itself, since it declares that it shall apply only to a crime involving moral turpitude. The necessary inference must be that there are crimes which do not. Since the act does not define moral turpitude, this duty falls on the courts and, as shown above, the result is confusion. It is submitted that the law should be changed and a definite standard set up to guide immigration officers and the courts in determining what acts will justify deportation. The present system is unjust in that an alien who has been convicted for the commission of a crime may be deported by the decision of one court while he would have been allowed to remain had his case arisen in another. Since the legislative policy is not to deport all aliens convicted of any crime, but only those who have committed offences of a certain class, the statute should definitely set the limits of that class.

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<sup>9</sup> *United States ex rel. Morlacci v. Smith*, (D. C. N. Y. 1925) 8 F. (2d) 663; *United States ex rel. Mazzillo v. Day*, (D. C. N. Y. 1926) 15 F. (2d) 391; *Weedin v. Tayokichi Yamada*, (C. C. A. 9th, 1925) 4 F. (2d) 455; *United States ex rel. Shladzien v. Warden of Eastern State Penitentiary*, (D. C. Pa. 1930) 45 F. (2d) 204; *United States ex rel. Rizzio v. Kenney*, (D. C. Conn. 1931) 50 F. (2d) 418.

<sup>10</sup> *Ciambelli ex rel. Maranci v. Johnson*, (D. C. Mass. 1926) 12 F. (2d) 465; *United States ex rel. Griffo v. McCandless*, (D. C. Pa. 1928) 28 F. (2d) 287.

<sup>11</sup> *United States ex rel. Mongiovi v. Karmuth*, (D. C. N. Y. 1929) 30 F. (2d) 825; *In re Schiano di Cola*, (D. C. R. I. 1934) 7 F. Supp. 194; *United States ex rel. Allissio v. Day*, (C. C. A. 2d, 1930) 42 F. (2d) 217.

<sup>12</sup> *United States ex rel. Sollana v. Doak*, (D. C. N. Y. 1933) 5 F. Supp. 561, *affd.* (C. C. A. 2d, 1933) 68 F. (2d) 1019; *Pillizz v. Smith*, (C. C. A. 7th, 1931) 46 F. (2d) 769.

<sup>13</sup> *Rousseau v. Weedin*, (C. C. A. 9th, 1922) 284 F. 565; *Riley v. Howes*, (D. C. Me. 1927) 17 F. (2d) 647, *reversed on other grounds*, (C. C. A. 1st, 1928) 24 F. (2d) 686.

<sup>14</sup> *Skrmetta v. Coykendall*, (D. C. Ga. 1926) 16 F. (2d) 783, *affd.* (C. C. A. 5th, 1927) 22 F. (2d) 120; *United States ex rel. Iorio v. Day*, (C. C. A. 2d, 1929) 34 F. (2d) 920.